

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

**LEONEL DE JESUS
DOMINGUEZ-GARCIA,**

Defendant.

CASE NO. 8:10CR135

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 38). The government adopted the PSR (Filing No. 37). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to the lack of a downward adjustment for a minor role in the offense under U.S.S.G. § 3B1.2(b) and states that he is entitled to the benefit of the safety valve under U.S.S.G. § 2D1.1(b)(11). The Court notes that it appears the objections were not submitted to the Probation Officer as required under ¶ 4 of the Order on Sentencing Schedule. Nevertheless, the objections will be heard at sentencing, and the Defendant has the burden with respect to both objections by a preponderance of the evidence.

IT IS ORDERED:

1. The Defendant's objections to the PSR (Filing No. 38) will be heard at sentencing;
2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion

challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 7th day of September, 2010.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge